



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2015-0819; FRL-9954-78-Region 9]**

#### **Revisions to the California State Implementation Plan; South Coast Air Quality Management District; Control of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve South Coast Air Quality Management District (SCAQMD or “the District”) Rule 2449, Control of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles, as a revision to the SCAQMD portion of the California State Implementation Plan (SIP). SCAQMD Rule 2449 adopts by reference title 13, chapter 9, section 2449.2 of the California Code of Regulations, “Surplus Off-Road Opt-In for NO<sub>x</sub> (SOON) Program.” SCAQMD Rule 2449 requires certain in-use off-road vehicle fleets to meet more stringent requirements in the South Coast area when funding is provided by the District in order to achieve additional reductions of oxides of nitrogen (NO<sub>x</sub>).

**DATES:** This rule will be effective on **[Insert date 30 days after the date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2015-0819. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g.,

Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Laura Lawrence, EPA Region IX, (415) 947-3407, [lawrence.laura@epa.gov](mailto:lawrence.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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### **I. Summary of Proposed Action**

On March 10, 2016 (81 FR 12637), under section 110(k) of the Clean Air Act (CAA or “the Act”), the EPA proposed to approve SCAQMD Rule 2449, “Control of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles” into the South Coast portion of the California SIP. SCAQMD Rule 2449 adopts by reference title 13, chapter 9, section 2449.2 of the California Code of Regulations, “Surplus Off-Road Opt-In for NO<sub>x</sub> (SOON) Program.” The rule requires certain in-use off-road vehicle fleets meet more stringent requirements in the South Coast area

when funding is provided by the District in order to achieve additional reductions of NO<sub>x</sub>.

SCAQMD Rule 2449 was originally adopted by the SCAQMD on May 2, 2008, and submitted to the EPA by the State of California on July 18, 2008. The District adopted revisions to the rule on July 11, 2014, and the amended rule was submitted to the EPA by the State on September 5, 2014. The 2014 revisions incorporated minor administrative updates made to the SOON program by the California Air Resources Board (CARB) in December 2011.

Off-road diesel vehicles collectively represent one of the largest sources of NO<sub>x</sub> emissions in the South Coast Air Basin. The purpose of Rule 2449 is to achieve surplus NO<sub>x</sub> reductions from this source category beyond those required under CARB's Off-Road Regulation, with funding provided by the SCAQMD. The SCAQMD's 2012 Air Quality Management Plan relies on NO<sub>x</sub> reductions from Rule 2449 to attain the one-hour and 1997 eight-hour ozone National Ambient Air Quality Standards. Rule 2449 is expected to achieve 7.5 tons per day (tpd) of NO<sub>x</sub> reductions in 2023. We note that the EPA is not approving these emission reductions in today's proposed rule; emission reductions or SIP credit from Rule 2449 will be addressed in future EPA actions on attainment plans.

Since our action proposing approval of Rule 2449, SCAQMD has adopted revisions to the SOON program guidelines. The revised guidelines were adopted on March 4, 2016, and sent to CARB for evaluation on August 17, 2016. CARB approved the guidelines on October 6, 2016.<sup>1</sup> A copy of this approval letter is found in the docket for this rulemaking action.

We proposed to approve this rule because we determined that it complied with the

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<sup>1</sup> See letter dated October 6, 2016, from Jack Kitowski, Chief, CARB Mobile Source Control Division to Henry Hogo, Deputy Executive Officer, SCAQMD.

relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

## **II. Public Comments and the EPA's Responses**

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

## **III. Final Action**

Pursuant to section 110(k)(3) of the Act and for the reasons stated in our proposed rule, the EPA is approving CARB's September 5, 2014 submittal of SCAQMD Rule 2449, "Control of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles," as a revision to the SCAQMD portion of the California SIP.

## **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of SCAQMD Rule 2449 in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, SCAQMD Rule 2449 available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**Insert date 60 days after date of publication in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 18, 2016.      Alexis Strauss,  
Acting Regional Administrator,  
Region IX.



Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart F – California**

2. Section 52.220 is amended by adding paragraph (c)(482) to read as follows:

**§ 52.220 Identification of plan – in part.**

\* \* \* \* \*

(c) \* \* \*

(482) New regulations for the following APCDs were submitted on September 5, 2014 by the Governor’s designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(I) Rule 2449, “Control of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles,” amended on July 11, 2014.

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